

State of Louisiana  
Department of Revenue



JEFF LANDRY  
GOVERNOR

RICHARD NELSON  
SECRETARY

October 4, 2024

Via e-mail (return receipt requested) to:

The Honorable Julie Emerson  
Chairman of the House Committee on Ways and Means  
P.O. Box 94062  
Baton Rouge, Louisiana 70804  
apa.h-wm@legis.la.gov

The Honorable Franklin Foil  
Chairman of the Senate Committee on Revenue & Fiscal Affairs  
P.O. Box 94183  
Baton Rouge, Louisiana 70804  
apa.s-r&f@legis.la.gov

**Re: Proposed Rule LAC 61:I.1312 - Net Capital Gains Deduction**

Chairman Emerson and Chairman Foil:

On February 8, 2024, a copy of the *Notice of Intent* issued by the Department of Revenue for promulgation of proposed Rule LAC 61:I.1312-*Net Capital Gains Deduction* was sent to your committees for review. Revised Statutes 47:293(9)(a)(xvii) and (10) provide an individual income tax deduction for net capital gains resulting from the sale or exchange of an equity interest in or substantially all of the assets of a non-publicly traded corporation, partnership, limited liability company, or other business organization commercially domiciled in Louisiana.

The primary purpose of the proposed Rule is to conform to the requirements set forth by Act 242 of the 2023 Regular Legislative Session ("Act 242"). Act 242 requires the Department to promulgate regulations relative to the net capital gains deduction and outlines minimum rule requirements. Act 242 mandates that the regulations contain: 1) documentation requirements applicable to taxpayers claiming the deduction; 2) a de minimis exception to documentation requirements for small transaction eligible for the

deduction; 3) eligibility restrictions for transactions where the majority of the physical assets are located outside of Louisiana; and 4) eligibility restrictions for transactions between related parties.

The Notice of Intent was published on pages 313 through 315 of the February 2024 issue of the Louisiana Register. A public hearing was held in the LaSalle Building on Thursday, March 28, 2024. There was one attendee from the Society of Louisiana Certified Public Accountants (LCPA) in addition to the one Department attorney. Additionally, written comments were received by two parties as noted below. The proposed Rule was revised in response to the comments received and the revision was published in the Potpourri notice of the August 2024 edition of the *Louisiana Register* (pages 1212 through 1214). A public hearing was held in the LaSalle Building on Wednesday, September 25, 2024 to hear comment on the revised proposed Rule. There were no attendees and no written comments were received. No further changes will be made.

#### Comments received from the LCPA

##### *Comment One:*

The proposed rule's definition of the term "Commercial Domicile" contains the word "principle." We suggest that "principle" be struck and replaced with "principal."

##### *Comment One Response:*

This technical change was made to the proposed Rule.

##### *Comment Two:*

Act 242 directs the Department of Revenue to promulgate regulations providing for, inter alia, "restrictions on eligibility for transactions if the majority of physical assets are located outside of Louisiana. The proposed regulation restricts the capital gains deduction to situations where "...75 percent or more of the real property or tangible assets are located within Louisiana..." We suggest that requiring 75 percent of the subject assets to be located within Louisiana is inconsistent with the reference to majority in the applicable statute. We therefore suggest that the proposed rule be modified to replace the reference to "75 percent or more" with "more than 50 percent."

##### *Comment Two Response:*

The proposed Rule was revised to reduce the percentage of real property required to be located in Louisiana from "75 percent or more" to "more than 50 percent." The final Rule will read as follows:

"Net capital gains resulting from the sale or exchange of tangible movable assets may qualify for the deduction if during the three years immediately preceding the sale or exchange, the tangible movable assets are located within Louisiana for at least 50 percent of the time in which the assets are in service, provided however, that the income from the related business was subject to

Louisiana income tax prior to the sale or exchange. "In service" shall have the same meaning as it does for the purposes of calculating depreciation."

*Comment Three:*

The proposed rule's definition of the term "Related Party" contains a reference to the term "controlled entities" without defining that term or otherwise referencing a definition of that term already present in another regulation or statute.

*Comment Three Response:*

The proposed Rule was revised to add the following definition for the term "controlled entities:"

*"Controlled Entities*—with respect to a business or taxpayer

- a. a corporation in which more than 50 percent of the value of the outstanding stock is owned (directly or indirectly) by or for the taxpayer or business,
- b. a partnership in which more than 50 percent of the capital interest or profits interest is owned (directly or indirectly) by or for the taxpayer or business, and
- c. any entity which is a related person to the taxpayer or business pursuant to paragraph (3), (10), (11), or (12) of 26 U.S.C § 267(b)."

*Comment Four:*

The proposed rule's definition of the term "Sale of Exchange of Substantially all of the Assets of a Business" contains references to the terms "net assets" and "gross assets." The difference between the two terms is unclear.

*Comment Four Response:*

The proposed Rule was revised to add definitions for the terms "net assets" and "gross assets." The final Rule will provide the following definitions:

*"Net Assets*—the total value of gross assets after deducting liabilities reportable or would be reportable on the Federal Form 1120, Schedule L if the form was required to be filed at time of sale as total assets at the end of the year."

*"Gross Assets*—the total value of assets reportable or would be reportable on the Federal Form 1120, Schedule L if the form was required to be filed at time of sale as total assets at the end of the year without regard to location of the assets and excluding any negative values reported on Lines 1-13."

*Comment Five:*

Item C(2)(a) of the proposed rule references the term "two returns." We presume this to mean two recent Louisiana income tax returns. If you do, you may want to add some specificity to the reference.

*Comment Five Response:*

The paragraph in full states: “copies of the last two returns on which the income from the business was reported. If the gain is derived from a partnership, provide Form IT-565, Louisiana Partnership Return of Income, for the last two years.” Use of the word “last” instructs the taxpayer that the returns must be the two most recent Louisiana income tax returns. “Last” is understood to mean the most recent historically. No change is needed.

*Comment Six:*

It is our members’ understanding that the Department’s administrative practice is to consider an individual’s capital gain from the sale of one or more rental properties as qualifying for the Sec. 47:293(9)(a)(xvii) deduction if all other relevant tests are met. Please consider referencing such qualifications in the proposed rule. If so, a logical place of inclusion might be in the definition of “Equity Interest.”

*Comment Six Response:*

The enabling statute provides no distinction on the character type of sales of assets (e.g. whether active, material ownership, or passive minority interests). Thus, the sale of rental properties are considered the sale of assets for purposes of the net capital gains deduction. Eligibility for claiming the deduction is the same for rental properties as for all other assets of a business commercially domiciled in Louisiana, There is no need to create a separate section in the Rule applying the requirements strictly to rental properties.

Comments receive from Liskow (Robert Angelico)

*Comment One:*

The proposed regulation in Section D states that net capital gains resulting from the sale or exchange of real property or tangible assets may qualify for the deduction if 75% or more of the real property or tangible assets are located within Louisiana, provided however, that the income from the related business was subject to Louisiana income tax prior to the sale or exchange. First, 75% is obviously much larger than a majority as referenced in Act 242. Consequently, the regulation should be changed to read that the requirement will apply “if more than 50%” of the assets are located within Louisiana.

*Comment One Response:*

See response to LCPA comment two above.

*Comment Two:*

Second, there are numerous businesses operating in Louisiana with a commercial domicile in Louisiana but which involve activities where some of the tangible assets of the business are not within the territorial limits of Louisiana in the normal day-to-day business. The proposed regulation should address these types of situations such that the presence of the various tangible business assets and retail location outside the state of Louisiana on a normal routine basis would not disqualify a transaction in which this type of business were sold by its owners from utilizing the net capital gains deduction. Proposed additional sentence:

“Notwithstanding the previous sentence, or any business with a commercial domicile in Louisiana that owns and operates any real property or tangible assets and where those business assets are located routinely and regularly outside the territorial limits of Louisiana, those Business Operating Assets shall be deemed to be located within Louisiana for purposes of this section. Business Operating Assets includes any real property, inventory or property, plant, and equipment used in the business as part of the regular routine operations of the business.”

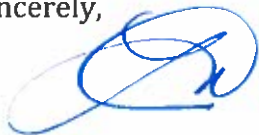
*Comment Two Response:*

To clarify the eligibility requirements for immovable and tangible movable assets relative to R.S. 47:293.2(B)(3), the proposed Rule was revised to include the following:

“Net capital gains resulting from the sale or exchange of tangible movable assets may qualify for the deduction if during the three years immediately preceding the sale or exchange, the tangible movable assets are located within Louisiana for at least 50 percent of the time in which the assets are in service, provided however, that the income from the related business was subject to Louisiana income tax prior to the sale or exchange. “In service” shall have the same meaning as it does for the purposes of calculating depreciation.”

This report is being made in accordance with R.S. 49:966(D)(1)(b) of the Administrative Procedure Act. Unless otherwise directed, the proposed Rule will be submitted for publication as a final rule in the November 2024 edition of the *Louisiana Register*. Should you have any questions or need additional information, please contact Christina Junker via email at [christina.junker2@la.gov](mailto:christina.junker2@la.gov) or by phone at (225) 219-7823.

Sincerely,



Luke Morris  
Assistant Secretary, Office of Legal Affairs

Cc: The Honorable Cameron Henry, President of the Senate,  
[apa.senatepresident@legis.la.gov](mailto:apa.senatepresident@legis.la.gov), The Honorable Phillip DeVillier, Speaker of the House,  
[apa.housespeaker@legis.la.gov](mailto:apa.housespeaker@legis.la.gov), Office of the State Register, [Reg.Submission@la.gov](mailto:Reg.Submission@la.gov)

there should be any limitations by rule on how the methodology for determining fair and equitable compensation to owners in interest adopted by the commissioner, whether a pre-application conference process should be included, how the release of pertinent data should be addressed, what information should be included in a permit application for unit operation, how proposed revisions to applications should be handled, requirements for opposition and support of applications, whether a commissioner's conference should be authorized, what should be the timelines for filings, requirements for hearing continuance, rules of procedure for hearings, consideration of new evidence that becomes available after the proceedings have been initiated, penalties for non-compliance with the rules, time for commencement, and unit and survey plat requirements.

Comments are requested to be submitted to Office of Conservation, Geological Oil and Gas Division, c/o Reid Bohlinger, 617 North Third Street, 9<sup>th</sup> Floor, Baton Rouge, LA 70802 by no later than September 9, 2024.

Benjamin Bienvenu  
Commissioner

2408#057

## POTPOURRI

### Department of Environmental Quality Office of the Secretary Legal Affairs Division

#### Regional Haze Second Planning Period State Implementation Plan (SIP) Revision

Under the authority of the Louisiana Environmental Quality Act, R.S. 30:2051 et seq., the secretary gives notice that the Office of Environmental Assessment, Air Planning and Assessment Division, will submit to the Environmental Protection Agency (EPA) a revision to the Louisiana State Implementation Plan (SIP) for Regional Haze, namely the Regional Haze Second Planning Period, as required by CFR 51.308(g). (2408Pot1)

The regional haze rule requires a comprehensive analysis of each state's regional haze SIP every 10 years and a progress report every five years. This 10-year review is intended to provide an update to Louisiana's regional haze SIP. This update provides an opportunity for public input on the state's and EPA's comprehensive revision to Louisiana's regional haze SIP.

All interested persons may submit written comments concerning the revision no later than 4:30 p.m., Tuesday, September 24, 2024, to Arlys Dalton, Office of Environmental Assessment, P.O. Box 4314, Baton Rouge, LA. 70821-4314, or by E-mail at arlys.dalton@la.gov. A public hearing will be granted upon request. The deadline for requesting a public hearing is Friday, September 6, 2024. The revision is available for review via LDEQ's electronic document management service (EDMS), AI# 174156, or at LDEQ Headquarters, 602 North 5th Street, Baton Rouge, Louisiana, 70802.

Aurelia S. Giacometto  
Secretary

2408#055

## POTPOURRI

### Department of Revenue Tax Policy and Planning Division

#### Notice of Public Hearing—Changes to Proposed Rule Net Capital Gains Deduction (LAC 61:I.1312)

The Department of Revenue published a Notice of Intent to promulgate LAC 61:I.1312 in the February 20, 2024 edition of the *Louisiana Register* (LR 50:313-315). There was one attendee from the Society of Louisiana Certified Public Accountants at the public hearing held on March 28, 2024 and written comments were received by two interested parties. Based on the comments provided and further consideration, the department is amending the proposed Rule as provided below.

The proposed Rule has been revised to add definitions for the terms "controlled entities," "net assets," and "gross assets", to clarify the eligibility requirements for immovable and tangible movable assets relative to R.S. 47:293.2(B)(3), and to make a technical correction. The proposed Rule was further revised to reduce the percentage of real property required to be located in Louisiana from 75 percent or more to more than 50 percent.

No fiscal or economic impact is expected from the changes to the proposed Rule.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 13. Income: Individual

#### §1312. Net Capital Gains Deduction

A. General. R.S. 47:293(9)(a)(xvii) and (10) provide a deduction for resident individuals and nonresident individuals ("taxpayers"), respectively, for net capital gains resulting from the sale or exchange of an equity interest in, or from the sale or exchange of substantially all of the assets of a non-publicly traded corporation, partnership, limited liability company, or other business organization ("business") commercially domiciled in Louisiana.

#### B. Definitions

*Capital Gains from the Sale or Exchange of the Assets of a Business*—capital gains from sales and exchanges that are reported on Federal Form 4797—Sales of Business Property, the gains from which are reportable on Schedule D of Federal Form 1040.

*Commercial Domicile*—the principal place from which the business is directed or managed.

*Controlled Entities*—with respect to a business or taxpayer

a. a corporation in which more than 50 percent of the value of the outstanding stock is owned (directly or indirectly) by or for the taxpayer or business,

b. a partnership in which more than 50 percent of the capital interest or profits interest is owned (directly or indirectly) by or for the taxpayer or business, and

c. any entity which is a related person to the taxpayer or business pursuant to paragraph (3), (10), (11), or (12) of 26 U.S.C § 267(b).

*Equity Interest*—an ownership interest in a business that is not publicly traded, such as stock in a corporation, a partnership interest in a partnership, or a membership interest in a limited liability company.

*Net Assets*—the total value of gross assets after deducting liabilities reportable or would be reportable on the Federal Form 1120, Schedule L if the form was required to be filed at time of sale as total assets at the end of the year.

*Net Capital Gains*—the amount reported as capital gains on the Federal Form 1040.

*Gross Assets*—the total value of assets reportable or would be reportable on the Federal Form 1120, Schedule L if the form was required to be filed at time of sale as total assets at the end of the year without regard to location of the assets and excluding any negative values reported on Lines 1-13.

*Related Party*—

a. a business or taxpayer and all entities which are controlled entities with respect to such business or taxpayer;

b. a business or taxpayer and any trust in which such business or taxpayer (or his spouse) is a beneficiary, unless such beneficiary's interest in the trust is five percent or less of the value of the trust property; and

c. except in the case of a sale or exchange in satisfaction of a pecuniary bequest, a taxpayer who is an executor of an estate and a beneficiary of such estate.

*Sale or Exchange of an Equity Interest*—a sale or exchange of an equity interest that is reportable on Schedule D of Federal Form 1040—Capital Gains and Losses.

*Sale or Exchange of Substantially all of the Assets of a Business*—a sale or exchange of assets that leaves the entity unable to carry-on its business. A sale or exchange of assets is presumed to be a sale or exchange of substantially all of the assets of the business if the selling business transfers at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets that it held immediately before the transfer.

#### C. Documentation Requirements

1. Taxpayers claiming the deduction shall submit the following documentation at the time of filing their Louisiana individual income tax return claiming the deduction:

a. a completed Louisiana Form R-6180, Net Capital Gains Deduction Worksheet;

b. documentary evidence of the date the taxpayer acquired an equity interest in the business, such as articles of incorporation or organization, acts of sale or exchange, or donative instruments;

c. a copy of the taxpayer's federal Schedule K-1, if applicable, from the entity from which the gain was derived; and

d. a complete copy of the taxpayer's Federal Form 1040 filed with the IRS for the period in which the gain was recognized, including the Schedule D and any corresponding schedules and forms.

2. In addition to the documentation required by Paragraph 1 above, when the capital gain for which a

deduction is being claimed is greater than \$250,000, taxpayers shall also submit the following at the time of filing their Louisiana individual income tax return claiming the deduction:

a. copies of the last two returns on which the income from the business was reported. If the gain is derived from a partnership, provide Form IT-565, Louisiana Partnership Return of Income, for the last two years.

b. If the gain is derived from a pass-through entity, provide detailed information on the pass-through structure, such as a complete organizational chart showing each tier between the taxpayer and the entity from which the gain is derived.

c. If the gain is from the sale of assets, the taxpayer shall also provide the following:

i. a depreciation schedule or fixed asset schedule showing a calculation of gross to net asset values; and

ii. an allocation of purchase price among assets as required by IRC Section 1060, and generally reportable on IRS Form 8594.

#### D. Eligibility Restrictions

1. Net capital gains resulting from the sale or exchange of real property or other immovable assets may qualify for the deduction if more than 50 percent of the real property or other immovable assets are located within Louisiana, provided however, that the income from the related business was subject to Louisiana income tax prior to the sale or exchange.

2. Net capital gains resulting from the sale or exchange of tangible movable assets may qualify for the deduction if during the three years immediately preceding the sale or exchange, the tangible movable assets are located within Louisiana for at least 50 percent of the time in which the assets are in service, provided however, that the income from the related business was subject to Louisiana income tax prior to the sale or exchange. "In service" shall have the same meaning as it does for the purposes of calculating depreciation.

3. Net capital gains from the sale or exchange of an equity interest or from the sale or exchange of substantially all assets shall not qualify for the deduction if the transaction transfers ownership of the interest or assets to a related party.

E. The accrual of refund interest shall be suspended during any period of time that a delay in allowance or approval of the deduction is attributable to the taxpayer's failure to provide information or documentation required herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:293(9)(a)(xvii) and (10), 47:293.2 and 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Policy and Planning Division, LR 50:

#### Public Comments

Any interested person may submit written data, views, arguments or comments regarding these proposed amendments to Christina Junker, Attorney, Tax Policy and Planning Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4 p.m., Tuesday, September 24, 2024.

#### Public Hearing

A public hearing will be held on Wednesday, September 25, 2024, at 10 a.m. in the LaBelle Room, on the first floor

of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802. Should individuals with a disability need an accommodation in order to participate, contact Christina Junker at the address given above in the Public Comments section, by email at LDRadarequests@la.gov, or by phone at (225) 219-2780.

Richard Nelson  
Secretary

2408#058

**POTPOURRI**

**Workforce Commission  
Office of Workers' Compensation Administration**

**Weekly Compensation Benefits Limits**

Pursuant to R.S. 23:1202, and based on the statewide average weekly wage as determined by the Louisiana Workforce Commission, the following limits shall apply to weekly compensation benefits for claimants injured during the period September 1, 2024 through August 31, 2025.

|                             | <b>Average Weekly Wage</b> | <b>Maximum Comp</b> | <b>Minimum Comp</b> |
|-----------------------------|----------------------------|---------------------|---------------------|
| Sept 1, 2001-Aug 31, 2002   | 530.43                     | 398.00              | 106.00              |
| Sept 1, 2002-Aug 31, 2003   | 554.31                     | 416.00              | 111.00              |
| Sept 1, 2003-Aug 31, 2004   | 572.53                     | 429.00              | 114.00              |
| Sept 1, 2004-Aug 31, 2005   | 584.40                     | 438.00              | 117.00              |
| Sept 1, 2005-Aug 31, 2006   | 605.46                     | 454.00              | 121.00              |
| Sept 1, 2006-Aug 31, 2007   | 637.19                     | 478.00              | 127.00              |
| Sept 1, 2007-Aug 31, 2008   | 696.00                     | 522.00              | 139.00              |
| Sept. 1, 2008-Aug. 31, 2009 | 728.10                     | 546.00              | 146.00              |
| Sept. 1, 2009-Aug. 31, 2010 | 768.83                     | 577.00              | 154.00              |
| Sept. 1, 2010-Aug. 31, 2011 | 772.18                     | 579.00              | 154.00              |
| Sept. 1, 2011-Aug. 31, 2012 | 789.00                     | 592.00              | 158.00              |
| Sept. 1, 2012-Aug. 31, 2013 | 807.07                     | 605.00              | 161.00              |
| Sept. 1, 2013-Aug. 31, 2014 | 825.54                     | 619.00              | 165.00              |
| Sept. 1, 2014-Aug. 31, 2015 | 839.76                     | 630.00              | 168.00              |
| Sept. 1, 2015-Aug. 31, 2016 | 865.31                     | 649.00              | 173.00              |
| Sept. 1, 2016-Aug. 31, 2017 | 876.00                     | 657.00              | 175.00              |
| Sept. 1, 2017-Aug. 31, 2018 | 870.00                     | 653.00              | 174.00              |
| Sept. 1, 2018-Aug. 31, 2019 | 886.38                     | 665.00              | 177.00              |
| Sept. 1, 2019-Aug. 31, 2020 | 916.85                     | 688.00              | 183.00              |
| Sept. 1, 2020-Aug. 31, 2021 | 940.00                     | 705.00              | 188.00              |
| Sept. 1, 2021-Aug. 31, 2022 | 990.85                     | 743.00              | 198.00              |
| Sept. 1, 2022-Aug. 31, 2023 | 1027.69                    | 771.00              | 206.00              |
| Sept. 1, 2023-Aug. 31, 2024 | 1088.07                    | 816.00              | 218.00              |
| Sept. 1, 2024-Aug. 31, 2025 | 1127.21                    | 845.00              | 225.00              |

| <b>Average Weekly Wage</b>   | <b>Maximum Compensation</b> | <b>Minimum Compensation</b> | <b>Mileage Reimbursement</b> |
|--|-----------------------------|-----------------------------|------------------------------|
| \$1127.21  | \$845.00                    | \$225.00                    | * .67 cents per mile         |
| *Effective January 1, 2024 the mileage reimbursement is \$0.67 per mile pursuant to R.S. 23:1203(D). |                             |                             |                              |

This information updates R.S. 23:1202 of the Louisiana Workers Compensation Act.

Actual wages are to be paid if the wages are less than the minimum.

Brian Blackwood  
Assistant Secretary

2408#056



Electronic meetings could potentially reduce expenses to directly affected persons, small businesses, or non-governmental groups by negating the need for travel to a board meeting.

#### IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

Implementation of this proposed rule is not anticipated to have an effect on competition and employment.

Ronnie S. Johns  
Chairman  
2402#026

Patrice Thomas  
Deputy Fiscal Officer  
Legislative Fiscal Officer

### NOTICE OF INTENT

#### Department of Revenue Tax Policy and Planning Division

##### Net Capital Gains Deduction (LAC 61:I.1312)

Under the authority of R.S. 47: 293.2 and 1511, and in accordance with the provisions of the Administrative Procedures Act, R.S. 49:950 et seq., the Department of Revenue, Tax Policy and Planning Division, proposes to adopt LAC 61:I.1312 to effectively administer R.S. 47:293.2 relative to the net capital gains deduction.

Revised Statutes 47:293(9)(a)(xvii) and (10) provide an individual income tax deduction for net capital gains resulting from the sale or exchange of an equity interest in or substantially all of the assets of a non-publicly traded corporation, partnership, limited liability company, or other business organization commercially domiciled in Louisiana.

Act 242 of the 2023 Regular Legislative Session (“Act 242”) requires the department to promulgate regulations relative to the net capital gains deduction and outlines minimum rule requirements. Act 242 provides that the regulations must contain: 1) documentation requirements applicable to taxpayers claiming the deduction; 2) a de minimis exception to documentation requirements for small transaction eligible for the deduction; 3) restrictions on eligibility for transactions where the majority of the physical assets are located outside of Louisiana; and 4) restrictions on eligibility for transactions between related parties. The primary purpose of this proposed Rule is to conform to these regulation requirements.

This Rule is written in plain language with a readability score of 11.11.

#### Title 61

#### REVENUE AND TAXATION

#### Part I. Taxes Collected and Administered by the Secretary of Revenue

#### Chapter 13. Income: Individual

#### §1312. Net Capital Gains Deduction

A. General. R.S. 47:293(9)(a)(xvii) and (10) provide a deduction for resident individuals and nonresident individuals (“taxpayers”), respectively, for net capital gains resulting from the sale or exchange of an equity interest in, or from the sale or exchange of substantially all of the assets of a non-publicly traded corporation, partnership, limited liability company, or other business organization (“business”) commercially domiciled in Louisiana.

#### B. Definitions

*Capital Gains from the Sale or Exchange of the Assets of a Business*—capital gains from sales and exchanges that are reported on Federal Form 4797—Sales of Business Property, the gains from which are reportable on Schedule D of Federal Form 1040.

*Commercial Domicile*—the principle place from which the business is directed or managed.

*Equity Interest*—an ownership interest in a business entity that is not publicly traded, such as stock in a corporation, a partnership interest in a partnership, or a membership interest in a limited liability company.

*Net Capital Gains*—the amount reported as capital gains on the Federal Form 1040.

*Related Party*—

a. a taxpayer and all entities which are controlled entities with respect to such taxpayer;

b. a taxpayer and any trust in which such taxpayer (or his spouse) is a beneficiary, unless such beneficiary’s interest in the trust is five percent or less of the value of the trust property; and

c. except in the case of a sale or exchange in satisfaction of a pecuniary bequest, a taxpayer who is an executor of an estate and a beneficiary of such estate.

*Sale or Exchange of an Equity Interest*—a sale or exchange of an equity interest that is reportable on Schedule D of Federal Form 1040—Capital Gains and Losses.

*Sale or Exchange of Substantially all of the Assets of a Business*—a sale or exchange of assets that leaves the entity unable to carry-on its business. A sale or exchange of assets is presumed to be a sale or exchange of substantially all of the assets of the business if the selling business transfers at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets that it held immediately before the transfer.

#### C. Documentation Requirements

1. Taxpayers claiming the deduction shall submit the following documentation at the time of filing their Louisiana individual income tax return claiming the deduction:

a. a completed Louisiana Form R-6180, Net Capital Gains Deduction Worksheet;

b. documentary evidence of the date the taxpayer acquired an equity interest in the business, such as articles of incorporation or organization, acts of sale or exchange, or donative instruments;

c. a copy of the taxpayer’s federal Schedule K-1, if applicable, from the entity from which the gain was derived; and

d. a complete copy of the taxpayer’s Federal Form 1040 filed with the IRS for the period in which the gain was recognized, including the Schedule D and any corresponding schedules and forms.

2. In addition to the documentation required by Paragraph 1 above, when the capital gain for which a deduction is being claimed is greater than \$250,000, taxpayers shall also submit the following at the time of filing their Louisiana individual income tax return claiming the deduction:

a. copies of the last two returns on which the income from the business was reported. If the gain is derived

from a partnership, provide Form IT-565, Louisiana Partnership Return of Income, for the last two years.

b. If the gain is derived from a pass-through entity, provide detailed information on the pass-through structure, such as a complete organizational chart showing each tier between the taxpayer and the entity from which the gain is derived.

c. If the gain is from the sale of assets, the taxpayer shall also provide the following:

i. a depreciation schedule or fixed asset schedule showing a calculation of gross to net asset values; and

ii. an allocation of purchase price among assets as required by IRC Section 1060, and generally reportable on IRS Form 8594.

#### D. Eligibility Restrictions

1. Net capital gains resulting from the sale or exchange of real property or tangible assets may qualify for the deduction if 75 percent or more of the real property or tangible assets are located within Louisiana, provided however, that the income from the related business was subject to Louisiana income tax prior to the sale or exchange.

2. Net capital gains from the sale or exchange of an equity interest or from the sale or exchange of substantially all assets shall not qualify for the deduction if the transaction transfers ownership of the interest or assets to a related party.

E. The accrual of refund interest shall be suspended during any period of time that a delay in allowance or approval of the deduction is attributable to the taxpayer's failure to provide information or documentation required herein.

AUTHORITY NOTE: Promulgated in accordance with R.S. 47:293(9)(a)(xvii) and (10), 47:293.2 and 47:1511.

HISTORICAL NOTE: Promulgated by the Department of Revenue, Tax Policy and Planning Division, LR 50:

#### Family Impact Statement

The proposed Rule should not have any known or foreseeable impact on any family as defined by R.S. 49:972(D) or on family formation, stability and autonomy. Specifically, the implementation of this proposed Rule will have no known or foreseeable effect on:

1. The stability of the family.
2. The authority and rights of parents regarding the education and supervision of their children.
3. The functioning of the family.
4. Family earnings and family budget.
5. The behavior and personal responsibility of children.
6. The ability of the family or a local government to perform this function.

#### Poverty Statement

This proposed Rule will have no impact on poverty as described in R.S. 49:973.

#### Small Business Analysis

The proposed Rule is not anticipated to have a significant adverse impact on small businesses as defined in the Regulatory Flexibility Act. The agency, consistent with health, safety, environmental and economic factors has considered and, where possible, utilized regulatory methods in drafting this proposed amendment to accomplish the objectives of applicable statutes while minimizing any anticipated adverse impact on small businesses.

#### Provider Impact Statement

The proposed Rule will have no known or foreseeable effect on:

1. The staffing levels requirements or qualifications required to provide the same level of service.
2. The total direct and indirect effect on the cost to the provider to provide the same level of service.
3. The overall effect on the ability of the provider to provide the same level of service.

#### Public Comments

Any interested person may submit written data, views, arguments or comments regarding these proposed amendments to Christina Junker, Attorney, Tax Policy and Planning Division, Office of Legal Affairs by mail to P.O. Box 44098, Baton Rouge, LA 70804-4098. All comments must be received no later than 4 p.m., Wednesday, March 27, 2024.

#### Public Hearing

A public hearing will be held on Thursday, March 28, 2024, at 1:30 PM in the LaBelle Room, on the first floor of the LaSalle Building, 617 North Third Street, Baton Rouge, LA 70802. Should individuals with a disability need an accommodation in order to participate, contact Christina Junker at the address given above in the Public Comments section, by email at [LDRadarequests@la.gov](mailto:LDRadarequests@la.gov), or by phone at (225) 219-2780.

Richard Nelson  
Secretary

### FISCAL AND ECONOMIC IMPACT STATEMENT FOR ADMINISTRATIVE RULES RULE TITLE: Net Capital Gains Deduction

#### I. ESTIMATED IMPLEMENTATION COSTS (SAVINGS) TO STATE OR LOCAL GOVERNMENT UNITS (Summary)

The purpose of the proposed rule is to implement Act 242 of the 2023 Regular Session ("Act 242"), which enacted R.S. 47:293.2 and requires the department to adopt certain regulations relative to the net capital gains deduction ("the deduction"). Specifically, R.S. 47:293.2 requires the department to adopt regulations establishing 1) documentation requirements applicable to taxpayers claiming the deduction; 2) a de minimis exception to documentation requirements for small transactions eligible for the deduction; 3) restrictions on eligibility for transactions where the majority of the physical assets are located outside of Louisiana; and 4) restrictions on eligibility for transactions between related parties. In addition, the rule defines certain terms and phrases contained in R.S. 47:293(9)(a)(xvii), which authorizes the deduction. The rule limits eligibility to net capital gains resulting from transactions in which at least 75 percent of the real property or tangible assets are located within Louisiana. Additionally, capital gain from transactions whereby ownership of the interest or assets are transferred to a related party do not qualify for the deduction. The rule further provides for the suspension of the accrual of refund interest should a taxpayer fail to provide information or documentation required within the regulation.

#### II. ESTIMATED EFFECT ON REVENUE COLLECTIONS OF STATE OR LOCAL GOVERNMENTAL UNITS (Summary)

The Louisiana Department of Revenue's ("LDR") implementation costs are expected to be minimal. The agency currently has sufficient funding to implement the proposed rule. It is assumed that eligible claims for the deductions, particularly for relatively small capital gains, are not being

submitted due to the required documentation. The rule would require less paperwork for claims for capital gains under \$250,000 which could result in an increase of claims for the deduction. However, the proposed rule also limits eligibility which could result in fewer eligible claims. Related parties and parties with less than 75 percent of real property or tangible assets located in Louisiana will no longer qualify for the deduction. The extent to which these new restrictions offset the reduced amount of paperwork is unknown. Overall, the impact to the state is indeterminable.

With no local income tax, there is no impact to local governmental revenue as a result of this rule.

III. ESTIMATED COSTS AND/OR ECONOMIC BENEFITS TO DIRECTLY AFFECTED PERSONS, SMALL BUSINESSES, OR NONGOVERNMENTAL GROUPS (Summary)

Act 242 and the proposed rule are expected to result in more taxpayers claiming the net capital gains deduction. Many taxpayers will experience reduced paperwork requirements when seeking the deduction, resulting in increased utilization to the extent that the deduction was not claimed due to the documentation required. LDR will no longer require a qualified appraisal of the business, which will result in a reduction of costs for those seeking the deduction. The proposed rule will also prevent misuse of the deduction by related parties and parties with less than 75 percent of real property or tangible assets located in Louisiana. The proposed rule requires taxpayers seeking to claim the deduction to attach certain documentation based on whether the capital gain for which a deduction is being claimed is less than or greater than \$250,000. Taxpayers with capital gains less than \$250,000 can expect less costs and paperwork than those with capital gains greater than \$250,000.

IV. ESTIMATED EFFECT ON COMPETITION AND EMPLOYMENT (Summary)

There is no anticipated impact on competition or employment.

Richard Nelson  
Secretary  
2402#025

Deborah A. Vivien  
Chief Economist  
Legislative Fiscal Office

**NOTICE OF INTENT**

**Department of Revenue  
Tax Policy and Planning Division**

**Partnership Filing Requirements  
(LAC 61:I.1402)**

Under the authority of R.S. 47:1511 and 201 and in accordance with the provisions of the Administrative Procedure Act, R.S. 49:950 et seq., the Department of Revenue, Tax Policy and Planning Division, proposes to adopt LAC 61:I.1402 relative to partnership filing requirements.

Revised Statute 47:201 requires partnerships to file an annual informational return of income, unless otherwise provided. The purpose of the proposed regulation is to implement Act 287 of the 2021 Regular Session of the Louisiana Legislature relative to partnership filing requirements.

The proposed Rule is written in plain language in an effort to increase transparency.

**Title 61**

**REVENUE AND TAXATION**

**Part I. Taxes Collected and Administered by the  
Secretary of Revenue**

**Chapter 14. Income: Partnerships**

**§1402. Partnership Filing Requirements**

**General Requirement**

1. Unless otherwise provided, all partnerships doing business or deriving Louisiana sourced income are required to file an informational partnership return of income with the Department of Revenue.

2. Partnerships subject to the filing requirement are required to file Form IT-565, *Partnership Return of Income*, and include all required schedules and attachments.

**B. Exceptions**

1. A partnership is exempt from filing a partnership return if any of the following are applicable:

a. The partnership's gross receipts were less than \$250,000 and the partnership's total assets at the end of the tax year were less than \$1 million.

i. For purposes of this Subparagraph, "gross receipts" means the sum of the amounts reportable as gross receipt or sales, ordinary income from other partnerships, estates, and trusts, net farm profit and other income on federal Form 1065 or successor form (Lines 1a, 4, 5 and 7 on the 2023 Form 1065); other gross rental income, interest income, ordinary dividends, royalties, and other income on Schedule K, Partners' Distributive Share Items, of federal Form 1065 or successor form (Lines 3a, 5, 6a, 7, and 11 on the 2023 Form 1065, Schedule K); gross proceeds from short-term and long-term capital gains on federal Schedule D, Capital Gains and Losses or successor form; gross proceeds from sale of business property on federal Schedule 4797 or successor form; and total gross rents on federal Form 8825 or successor form, (Line 18a on the 2023), excluding any negative values.

ii. For purposes of this Subparagraph, "total assets" means amounts reportable as end of tax year total assets on Schedule L, Balance Sheet per Books of the federal Form 1065, or successor form (Line 14, column D on the 2023 Form 1065, Schedule L) without regard to location of assets, and excluding any negative values reported as assets on the lines preceding of Schedule L (Lines 1 through 13 on the 2023 form).

b. The partnership is not required to file federal Form 1065 with the Internal Revenue Service.

c. The partnership elected to be taxed as a corporation and files Form CIFT 620 with the Department of Revenue.

d. A partnership qualifying for any exception under this Paragraph must complete Form IT-565, *Partnership Return of Income*, when necessary, for the purpose of providing all partners with the information necessary to file all required income tax returns with the Department of Revenue.

2. Notwithstanding Paragraph 1, a partnership shall file a state partnership return regardless of any applicable exception, when any of the following apply: